

Staff Summary Report

Council Meeting Date: 04/17/2008

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing the execution of a Memorandum of Understanding with Maricopa County Recorder to allow the City of Tempe the ability to record documents electronically.

DOCUMENT NAME: 20080417PWCH01 **MARICOPA COUNTY (0109-29)**
RESOLUTION NO. 2008.29

SUPPORTING DOCS: Yes

COMMENTS: The City of Tempe desires the ability to record documents by using the electronic recording capabilities offered to certain entities such as municipalities, title companies, and lending institutions by the Maricopa County Recorder's Office. This MOU will allow city staff the ability to have recorded documents almost instantly, eliminating the six (6) to eight (8) week lag time we now incur waiting for the return of the original documents.

PREPARED BY: Larry Shobe, Engineering Services Administrator (x8417)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW AS TO FORM: Jenae Naumann, Assistant City Attorney (x8402)

FISCAL NOTE: N/A

RECOMMENDATION: Adopt Resolution No. 2008.29 and authorize the Mayor to execute any necessary documents.

RESOLUTION NO. 2008.29

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, AUTHORIZING THE EXECUTION OF A MEMORANDUM
OF UNDERSTANDING WITH MARICOPA COUNTY TO PERFORM
ELECTRONIC/DIGITAL RECORDING OF LEGAL DOCUMENTS

WHEREAS, it has been determined that the City of Tempe desires to enter into an agreement with Maricopa County to allow the electronic recording of legal documents on site,

WHEREAS, it would be in the best interest of the City of Tempe to enter into a Memorandum of Understanding with Maricopa County Recorder;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION I: That the Mayor or his designee is authorized to execute the Memorandum of Understanding, a copy of which is on file with the City Clerk's office, and to take such further actions as necessary to implement its terms.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

This _____ day of April, 2008.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



**MARICOPA COUNTY RECORDER'S OFFICE
HELEN PURCELL, COUNTY RECORDER
111 South Third Avenue
Phoenix, AZ 85003**

Contract No. C2008

**ELECTRONIC/DIGITAL RECORDING
MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING, dated _____ is
between _____ **County** (Hereinafter "County" and

Submitter"). (hereinafter "Company" or "Third-Party

_____ **County** desires to offer recording of real property documents by electronically receiving and transmitting documents electronically in substitution for conventional paper based documents and to assure that transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies for the mutual benefit of the parties of the transactions.

For purposes of this Memorandum of Understanding, Electronic Recording is defined based on the level of automation and structure of the transaction. The three levels of automation are as follows:

Level 1 Submitting organizations transmit scanned image original of ink signed documents to the county. The County completes the recording process in the same way as paper using the imaged copy as the source document. An electronic recording endorsement is returned to the organization in the form of a label or printing process in order for the submitting organization to append that information to the original paper document.

Level 2 Submitting organizations transmit scanned images of ink signed documents along with electronic indexing information to the county. The County performs an electronic examination of the imaged documents and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is made available to the submitting organization.

Level 3 Submitting organizations transmit documents which have been created, signed and notarized electronically along with the electronic indexing information or a Smart document which are a single object containing the electronic version of the document in such a way that enables the electronic extraction of data from the object.

Smart documents are required to be signed and notarized electronically. Electronic signatures must comply with the Uniform Electronic Transaction Act (UETA), 15 U.S.C. §§ 7001 to 7031, Arizona Electronic Transaction Act (AETA), A.R.S. §§ 44-7001 to 44-7051, and Electronic Signatures in Global and National Commerce Act (E-Sign) Pub. L No. 106-229, 114 Stat. 464 (2000) (codified as 15 U.S.C. §§ 7001-7006, 7021, 7031) (enacted S. 761) specifications. You can find further information on these laws at

<http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ueta99.htm>;

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/44/07001.htm&Title=44&DocType=ARS>; <http://www.ftc.gov/os/2001/06/esign7.htm>. The County performs

an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents. Electronic and Smart documents are made available to the submitting organization.

Program Eligibility

Arizona Revised Statutes Section 11-461(C) provides that a title insurer or title insurance agent as defined in A.R.S. § 20-1562, a state chartered or federally chartered bank insured by the federal deposit insurance corporation, an active member of the state bar of Arizona, an agency, branch or instrumentality of the federal government, a trusted submitter or a governmental entity may directly or through a trusted third party provider submit real property records for electronic recording and the instrument from which the digitized image is taken conforms to all applicable laws relating to the recording of paper instruments.

Electronic Recording mandates a close working relationship as well as mutual trust between the County and the submitting entity. All parties of the Electronic Recording transaction desire to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud and forgery. This Memorandum of Understanding outlines the procedures and rules for the trusted relationship between the County and Company to facilitate a safe and secure Electronic Recording relationship.

Participation in the Electronic Recording program is voluntary and the decision to do so is a business judgment. There will be no added fees or costs of any kind charged by the County for Electronic Recording.

County Requirements

The Electronic Recording Program of County is defined by the requirements attached to this Memorandum of Understanding.

Attachment A defines the technical specifications including format, levels of recording supported, transmission protocols, and security requirements of the electronic records required by County. Company agrees to provide the transmission to the County following the specifications outlined. Company understands that the specifications may change from time to time. In the event changes to the specification are required, the County will provide a written notice to the Company within a reasonable timeframe.

Attachment B contains the document and indexing specifications for the Electronic Recording program. For each document, the County specific document code is provided along with the required indexing information. Any County specific editing rules will also be described in this attachment. All indexing specifications must follow the Property Records Industry Association (PRIA) standards as set out on their website: <http://pria.us>.

Attachment C contains the processing schedules and hours of operation for the Electronic Recording Program. Neither party shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of Nature or other cause beyond the party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents the parties from transmitting or receiving the electronic recording transactions. If the County system causes delays or power failures interfere with the normal course of business, the County will notify the affected Company with a choice of using a courier service or waiting until the problem has been remedied.

Attachment D provides the payment options supported for the Electronic Recording program.

Company/Third Party Submitter Responsibilities

Company acknowledges that Electronic Recording permits them to prepare, sign and/or transmit in electronic formats documents and business records and the document or records shall be considered as the "original" record of the transaction in substitution for, and with the same intended effect as, paper documents and, in the case that such documents bear a digital or electronic signature, paper documents bearing handwritten signatures.

By use of electronic or digital certificates to sign documents, Company intends to be bound to those documents for all purposes as fully as if paper versions of the documents had been manually signed.

By use of electronic or digital certificates to sign documents, Company intends to be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

By use of digital certificates to seal electronic files containing images of original paper documents or documents bearing manual signatures, Company shall recognize such sealed images for all purposes as fully as the original paper documents and shall be responsible for any failure by Users to comply with quality control procedures for assuring the accuracy and completeness of the electronic files.

The Company and/or its employees attest to the accuracy and completeness of the electronic records and acknowledge responsibility for the content of the documents submitted through the Electronic Recording Program. Should a dispute or legal action arise concerning an electronic transaction, the County will be held harmless and not liable for any damages.

Company is responsible for the costs of the system or services provided by a third party that enables Company to meet the Electronic Recording Program requirements.

General Understanding

The County will not incur any liability for the information electronically transmitted by the Company, included but not limited to any breach of security, fraud or deceit.

Neither the County nor Company shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the Electronic Recording transmission or receipt.

The County and Company will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through either negotiation or mediation prior to initiating litigation.

Either party may terminate this Memorandum of Understanding for any reason by providing 30 days written notice of termination.

The County and Company acknowledge that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the electronic recording process, the County and Company will meet as needed to discuss changes and additions to this Memorandum of Understanding.

Agreed and Accepted:

By: City of Tempe (Company)

Signature: _____

Print Name: _____ Mayor

Date: _____

ATTEST:

Approved as to Form:

Jan Hort, City Clerk

By: _____
Tempe City Attorney

Date: _____

Date: _____

By: MARICOPA (County)

Signature: [Handwritten Signature]

Print Name: LEE ANN WADE

Date: 7-20-08

Customer Account # 0022 (To be completed by County)

Attachment A Technical Specifications

Format of the transmitted File

Property Records Industry Association (PRIA) <http://pria.us/> Mortgage Industry Standards Maintenance Organization (MISMO) file format standard will be used <http://www.mismo.org/default.htm>. Any multi page storage format as specified by the County.

Communications Protocol and Options

Transmission Control Protocol/Internet Protocol (TCP/IP)

Security Framework

Encryption will be a minimum 128 bit file and image encryption. Secure Socket Layer (SSL) and user login/password will be employed. User passwords are controlled by the Company and should be monitored/or changed periodically to ensure security. Computers on which documents originate must have all critical operating system patches applied , must have a firewall (hardware or software) installed, and must have up to date virus scan software.

Returned File Format

Property Records Industry Association (PRIA)/Mortgage Industry Standards Maintenance Organization (MISMO) file format standard will be used. Any multi page storage format as specified by the County.

<http://pria.us> and <http://www.mismo.org/default.htm>

Levels of Electronic Recording Supported

Levels 1, 2, and 3 or as specified by the County.

Electronic Signatures and Use of Digital Certificates

The use of Electronic Signatures and Digital Certificates will need to adhere to the guidelines set out in E-Sign (please refer to federal statutes regarding this law) and Secretary of State administrative rules (<http://www.azsos.gov/pa>).

Imaging Standards

Documents will be scanned at a minimum of 300 dpi.

Documents will be scanned in portrait mode.

Document images will be captured in any multi page storage format as specified by the County.

Scanned documents will be legible so as to be able to reproduce onto microfilm or microfiche as required by law in A.R.S. § 11-480 – including signatures and notary seals.

Document font size must be 10 point or larger, margins will consist of a minimum of a 2" top margin and ½" side and bottom margins. NO DOCUMENTS WILL BE ACCEPTED THAT FAIL TO MEET THIS STANDARD (A.R.S. § 11-480).

Documents must be scanned to original size.

Attachment B Documents and Indexing Specifications

Eligible Document Types

All document types and sizes must meet the requirements as set forth in A.R.S. § 11-480.

County Specific Document Type Coding

Please refer to PRIA website for the Logical Data Dictionary, which lists all the acceptable "Document Types". <http://pria.us/> It is the County's intention to not reject documents based on "incorrect or non-County specific document types. Rather the County will correct the document type as part of the acceptance process.

Indexing Fields for each Document Code

All documents submitted will require the minimum index fields:

Grantor(s) or equivalent

Grantee(s) or equivalent

Document Type

Recording Fee

Related (original document number, in the case of releases, assignment, amendments, etc.).

Legal Description Fields as specified by County

Standard PRIA tags defined for these fields must be used. <http://pria.us/>

Affidavits of Value (AOV) per A.R.S. §§ 11-1133 and 11-1137(B).

AOV's will be scanned immediately following the Deed they are associated with. All Deeds will be accompanied by an AOV or an exemption code. Forms or exemption codes can be retrieved from this website.

<http://www.azdor.gov/Forms/property.asp>

Standard MISMO tags defined for these fields must be used.

<http://www.mismo.org/default.htm>

Document Imaging Quality Control Standards

Scanned documents will be legible so as to be able to reproduce onto microfilm or microfiche as required by law in A.R.S. § 11-480 – including signatures and notary seals. All documents must meet the recording requirements as set forth in A.R.S. § 11-480.

The xhtml document must display in W3C (World Wide Web Consortium) Standards.

Notary Requirements per Document

It is the responsibility of the Company to confirm that notary signatures and seals are present on all documents that require them.

Inked notary seals are strongly recommended, in place of embossed notary seals which require “darkening” by the Company prior to submittal.

All electronic notaries must adhere to the Secretary of State Standards for electronic notaries. <http://www.azsos.gov/pa>

Eligible Document Batches

Document batches will be submitted by a standard naming convention as specified by the County.

The maximum size of electronic document batches will be determined by the County.

Attachment C Service Offering

Hours of Operation

Documents may only be submitted during the normal business hours of the County which is typically between 8 a.m. and 5 p.m., Mountain Standard Time. Documents will not be processed on federal or county holidays, weekends, snow days, declared emergencies, etc. or in the event of network or equipment failure. County will attempt to notify Company of any disruption in service.

Processing Schedules

Document batches must be received by 5:00 p.m. Mountain Standard Time to be recorded or rejected.

Return Options

Submitted documents that are accepted for recording will be made available to the Company in electronic format after recording.

Submitted documents that are rejected will be made available to the Company in electronic format after rejection, along with a description of the reason(s) for rejection.

Service Help Contact Information

County:

County eRecording Vendor:

Company:

Company eRecording Vendor:

Attachment D
Payment Options

Payment Options

Will be specified by County